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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: 23ANDME, INC. CUSTOMER DATA
SECURITY BREACH LITIGATION

No. 3:24-md-03098-EMC

This Document Relates to: ALL ACTIONS

**MOTION TO APPOINT
CARI CAMPEN LAUFENBERG
AS INTERIM CO-LEAD COUNSEL**

Judge: Hon. Edward M. Chen
Courtroom: 5, 17th Floor
Hearing Date: May 30, 2024
Hearing Time: 1:30 p.m.

Pursuant to Federal Rule of Civil Procedure 23(g) and the Court's October 6, 2023 Order, ECF No. 21, Plaintiff Camie Picha (No. 5:23-cv-6719-EMC) respectfully requests entry of an Order appointing Cari Campen Laufenberg of Keller Rohrback L.L.P. ("Keller Rohrback") as Interim Co-Lead Counsel to coordinate and manage this important litigation.

I. INTRODUCTION

Ms. Laufenberg respectfully submits the following application to serve as Interim Co-Lead Counsel. Ms. Laufenberg is highly qualified and committed to pursuing claims on behalf of the millions of putative class members whose highly sensitive personal information was compromised in the data breach announced by 23andMe, Inc. (“23andMe”) in October 2023. Ms. Laufenberg’s appointment as Interim Co-Lead Counsel will ensure that this important litigation is allocated the significant experience and resources necessary to further Plaintiffs’ claims on behalf of the putative class.

II. THE RULE 23(G) FACTORS SUPPORT MS. LAUFENBERG’S APPOINTMENT

A. The Federal Rule of Civil Procedure 23(g) Factors

The Court may “designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.” Fed. R. Civ. P. 23(g)(3). In complex class action litigation involving numerous parties with common interests, “the selection and activity of class counsel are often critically important.” Fed. R. Civ. P. 23(g) Advisory Committee’s Note (2003). The factors for appointing class counsel under Rule 23(g)(1) include “the work counsel has done in identifying or investigating potential claims in the action; . . . counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; . . . counsel’s knowledge of the applicable law; . . . the resources that counsel will commit to representing the class; . . . [and] any other matter pertinent to counsel’s ability to fairly and adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(1) & (g)(4).

B. Ms. Laufenberg Is Well-Qualified to Serve as Interim Co-Lead Counsel.

Ms. Laufenberg has considerable experience in the fields of data breach and data privacy litigation, as well as other large-scale and multidistrict complex class action litigation. For instance, Ms. Laufenberg currently serves as Interim Co-Lead Counsel in the multidistrict litigation *In Re: T-Mobile Customer Data Security Breach Litigation*, No. 4:23-MD-03073-BCW, MDL No. 3073 (W.D. Mo.)—a case involving a November 2022 data breach impacting 37 million customers of U.S. wireless carrier T-Mobile. Ms. Laufenberg also serves as Co-Lead Counsel in multidistrict litigation regarding a 2021 data breach involving T-Mobile, *In Re: T-Mobile Customer Data Security Breach Litigation*, No. 4:21-MD-03019-BCW, MDL No. 3019 (W.D. Mo.), in which she worked effectively

1 and efficiently with Co-Lead Counsel and other members of the leadership team to negotiate a ground-
 2 breaking \$350 million settlement on behalf of approximately 76 million class members, which was
 3 granted final approval in June 2023. *See* Declaration of Cari Campen Laufenberg in Support of Motion
 4 to Appoint Interim Co-Lead Counsel (“Laufenberg Decl.”) ¶¶ 3-4.

5 Ms. Laufenberg has also previously served as Co-Lead or Class Counsel in a number of
 6 successful data breach and data privacy actions. For example, Ms. Laufenberg was appointed as Interim
 7 Co-Lead Counsel for Plaintiffs in the multidistrict litigation *In Re: 21st Century Oncology Customer*
 8 *Data Security Breach Litigation*, No. 8:16-md-2737-MSS-AEP, MDL No. 2737 (M.D. Fla.)—a case
 9 involving an October 2015 data breach impacting 2.2 million customers of Florida-based healthcare
 10 provider 21st Century Oncology, which resulted in a settlement providing for credit monitoring and
 11 insurance services, monetary relief for out-of-pocket costs and losses, and payment for time incurred
 12 as a result of the data breach. *See* Laufenberg Decl. ¶ 5. In achieving this result with co-counsel, Ms.
 13 Laufenberg drew on her own skill and experience grappling with the complex, technical subject matters
 14 of data security and industry best practices, as well as Keller Rohrback’s expertise and experience in
 15 the fields of bankruptcy and insurance coverage litigation in addressing the related bankruptcy
 16 proceedings and insurance coverage declaratory actions that were critical to resolve this litigation. *See*
 17 Keller Rohrback L.L.P. Firm Resume, attached as Exhibit A to Laufenberg Decl.

18 Ms. Laufenberg also represented plaintiffs as Settlement Class Counsel in *Fox v. Iowa Health*
 19 *System*, No. 3:18-cv-00327-JDP (W.D. Wis.), an action against Iowa Health System (UnityPoint
 20 Health) on behalf of approximately 1.4 million individuals in Wisconsin, Iowa, and Illinois, which
 21 resulted in a favorable settlement approved in March 2021. *See* Laufenberg Decl. ¶ 6. She has served
 22 in leadership positions in other consumer class-action cases in federal courts across the country,
 23 including as Interim Lead Class Counsel in *In re EpiPen ERISA Litigation*, No. 17-cv-01884-PAM-
 24 HB (D. Minn.). Ms. Laufenberg has also served as a member of several leadership committees,
 25 including her recent appointment as a member of the Plaintiffs’ Steering Committee in *In re Oral*
 26 *Phenylephrine Marketing and Sales Practice Litigation*, No. 1:23-md-3089-BMC, MDL No. 3089
 27 (E.D.N.Y.), and previous service as a member of the Plaintiffs’ Steering Committees in *In Re: Experian*
 28 *Data Breach Litigation*, No. SACV 15-1592 AG (DFMx) (C.D. Cal.) and *In Re: VTech Data Breach*

1 *Litigation*, 15-cv-10889 (N.D. Ill.). *See* Laufenberg Decl. ¶ 7.

2 Ms. Laufenberg additionally played a key role in *In re: Facebook, Inc. Consumer Privacy User*
 3 *Profile Litigation*, No. 18-md-02843-VC, MDL No. 2843 (N.D. Cal.), in which Keller Rohrback
 4 partner Derek Loeser was appointed Interim Co-Lead Counsel. There, together with co-lead counsel,
 5 Keller Rohrback achieved a \$725 million settlement—the largest recovery ever achieved in a data
 6 privacy class action and the most Facebook has ever paid to resolve a private class action. *See*
 7 Laufenberg Decl. ¶ 8.

8 In addition to her highly relevant background and experience, Ms. Laufenberg pursues cases
 9 with passion and dedication in a professional and civil manner, emphasizing teamwork, collaboration,
 10 and finding creative solutions to complex problems. Likewise, Ms. Laufenberg has first-hand
 11 experience with the substantial time commitment required to prosecute a multidistrict data breach
 12 litigation and is available and prepared to make such a commitment to this litigation. For these reasons,
 13 Ms. Laufenberg is well suited to represent the interests of Plaintiffs here. *See id.* ¶ 9.

14 **C. Keller Rohrback’s Complex Litigation Group Has the Expertise and Resources to Fully**
 15 **Support Ms. Laufenberg as Interim Co-Lead Counsel.**

16 Ms. Laufenberg brings with her the full support of Keller Rohrback L.L.P., a recognized leader
 17 in complex class action litigation nationwide, with the depth and breadth of experience and resources
 18 to manage and prosecute a case of this magnitude. *See* Laufenberg Decl. ¶ 2 & Ex. A.

19 For more than 35 years, Keller Rohrback’s nationally recognized Complex Litigation Group
 20 has successfully represented consumers, employees, and government entities nationwide in many of
 21 the most complex and cutting-edge cases. Headquartered in Seattle, it also has offices nationwide in
 22 Oakland, Santa Barbara, Portland, Denver, Phoenix, Missoula, and New York. With more than sixty
 23 attorneys, Keller Rohrback frequently serves as lead counsel and in other appointed leadership
 24 positions in prominent consumer class actions, and has successfully litigated cases in state and federal
 25 courts throughout the nation, obtaining judgments and settlements on behalf of clients in excess of \$87
 26 billion. *See* Laufenberg Decl., Ex. A.

27 Keller Rohrback has extensive experience and demonstrated leadership in data breach and data
 28 privacy class action litigation. More than ten years ago, when the field of data privacy law was in its

1 infancy, Keller Rohrback pursued an employee data breach case through appeal to obtain a
2 groundbreaking decision regarding standing that remains black-letter law in the Ninth Circuit. *See*
3 *Krottner v. Starbucks Corp.*, 628 F.3d 1139 (9th Cir. 2010). Keller Rohrback's Complex Litigation
4 Group also has a depth and breadth of experience leading large and complex consumer class actions in
5 other practice areas, including environmental litigation, mass torts, employment law, and retirement
6 security. *See* Laufenberg Decl., Ex. A.

7 The firm also has a full-scale e-discovery team, led by partner Eric Fierro and staffed by
8 certified technology experts and database engineers, with extensive experience in large-scale electronic
9 discovery and related litigation support—including in the context of data breach litigation. Keller
10 Rohrback's e-discovery team is capable of handling large document productions in-house and can
11 communicate effectively with plaintiff or defense side e-discovery teams to ensure efficient
12 transmission of useful, targeted information in the context of large-scale productions. Further, Keller
13 Rohrback's offices in California, Colorado, Washington, Oregon, Arizona, Montana, and New York
14 enable the group to support discovery and litigation throughout other areas of the country. The firm is
15 also able to commit the personnel and financial resources necessary to prosecute this matter efficiently
16 and effectively, without the use of third-party litigation funding. *See* Laufenberg Decl., Ex. A.

17 Moreover, unlike many plaintiff-specific practices, Keller Rohrback is a full-service law firm
18 with a wide array of practice groups. As such, the Complex Litigation Group is able to call upon
19 attorneys who specialize in business and commercial law, financial products and services, bankruptcy
20 and financial restructuring, and insurance coverage litigation. This breadth and depth of legal
21 knowledge and litigation experience has frequently been invaluable in helping to prosecute and resolve
22 complex consumer and data breach matters, such as the *In Re: 21st Century Oncology Customer Data*
23 *Security Breach Litigation*, the resolution of which required navigating the complexities of bankruptcy
24 proceedings as well as a collateral insurance coverage action between the defendant and its insurers.
25 *See* Laufenberg Decl., Ex. A.

26 In short, Keller Rohrback has a breadth and depth of experience, particularly in the field of data
27 breach and privacy litigation, that makes it uniquely well equipped to support Ms. Laufenberg's work
28 to lead, manage, and resolve this complex multidistrict litigation in an efficient and effective manner.

D. Ms. Laufenberg and Keller Rohrback Have Advanced the Interests of the Class

During the months that the related actions have been pending prior to the Judicial Panel on Multidistrict Litigation’s Transfer Order, Ms. Laufenberg has worked closely with other attorneys representing Plaintiffs to advance the interests of putative class members in this important litigation. After investigating and filing a complaint on behalf of Plaintiff Picha against 23andMe, Ms. Laufenberg corresponded with other counsel for Plaintiffs and contributed to the joint opposition to 23andMe’s motion to stay the litigation. Similarly, Ms. Laufenberg filed a response to the transfer motion before the Judicial Panel on Multidistrict Litigation (“JPML”). Ms. Laufenberg also worked with many of the attorneys representing Plaintiffs to prepare for and attend an early mediation with 23andMe on January 31, 2024. Although this mediation was unsuccessful, it represented a meaningful first step towards a resolution of this action. *See* Laufenberg Decl. ¶ 10. Since then, Ms. Laufenberg has continued to communicate regularly with counsel for plaintiffs regarding this litigation, keeping abreast of developments with regard to settlement discussions, and has attended this Court’s hearing on 23andMe’s motion to stay as well as the hearing before the JPML regarding the transfer motion. *See id.* ¶ 11.

E. Ms. Laufenberg Will Work Effectively and Efficiently with Other Plaintiffs’ Counsel

If appointed Interim Co-Lead Counsel, Ms. Laufenberg will continue to work collaboratively with other counsel to advance the interests of the proposed class, while allocating work efficiently, minimizing duplication of efforts, and maximizing cost efficiencies. In this regard, Ms. Laufenberg has a demonstrated track record of working collaboratively with all counsel to achieve impressive outcomes that maximize results for class members. *See id.* ¶ 12.

Ms. Laufenberg fully understands that time is of the essence to secure benefits for the putative class of data breach victims, who are at serious ongoing risk of identity theft, fraud, and other harms. As Interim Co-Lead Class Counsel, Ms. Laufenberg would work at the direction of the Court and in coordination with other Plaintiffs’ counsel, in accordance with The Manual for Complex Litigation, to implement fair, efficient and transparent management protocols, including close oversight of the assignment of work. Ms. Laufenberg takes seriously and has extensive experience ensuring accountability for the timely completion of tasks, regularly reviewing and auditing time and expense

reports to protect against inefficiencies, and sharing regular updates with Plaintiffs' counsel regarding the progress of the case. In these regards, Ms. Laufenberg's extensive experience serving in leadership roles in multidistrict litigation and other coordinated proceedings makes her well-suited to oversee the efficient management of Plaintiffs' efforts in a manner that will allow various counsel to participate at the highest level possible, appropriate to their experience and resources, while avoiding duplication of efforts. *See id.* ¶ 13. Further, Ms. Laufenberg will take advantage of Keller Rohrback's extensive legal abilities and resources to ensure that this litigation is prosecuted in an efficient manner, employing cutting-edge technology and case management techniques as well as delegating relevant tasks to in-house support personnel and experienced paralegals where appropriate. *See id.* ¶ 14.

For these reasons, Plaintiffs and members of the proposed class would be well served by an order appointing Ms. Laufenberg as Interim Co-Lead Counsel. Plaintiff Picha also supports the appointment of Hassan Zavareei of Tycko and Zavareei LLP—counsel for the plaintiff in *Bacus v. 23andMe*, No. 23-cv-16828 (N.D. Ill.)—as Interim Co-Lead Counsel, for the reasons set forth in Ms. Bacus' Motion. Plaintiff Picha would also welcome the opportunity to work with any of the applicants for leadership in this case, many of whom she and her firm have worked with successfully in numerous other matters, including Norman Siegel at Stueve Siegel Hanson LLP, Gayle Blatt at Casey Gerry Schenk Francavilla Blatt & Penfield LLP, Rafey Balabanian at Edelson PC, Dorothy Antullis at Robbins Geller Rudman & Dowd LLP, and Maureen Brady at McShane & Brady, LLC, among others. *See id.* ¶ 15.

F. PROPOSED CASE PLAN

While it will be necessary to meet and confer with counsel for Defendant prior to proposing any Proposed Rule 16 Schedule, Plaintiff Picha offers the following approximate case schedule up to and including proceedings on class certification, as an example of the initial case plan for which Plaintiff Picha would advocate:

| Event | Proposed Date |
|-------------------------------------|-----------------------------|
| Appointment of interim lead counsel | Late April / early May 2024 |

| Event | Proposed Date |
|--|--|
| Settlement negotiations | Potentially continuing late April / early May 2024 |
| Fact Discovery commences* | Upon the Court entering an order appointing interim lead counsel* |
| Rule 26(a) initial disclosures | 21 days after the Court enters an order appointing interim lead counsel |
| Proposed Protective Order and ESI Protocol | 21 days after the Court enters an order appointing interim lead counsel |
| Consolidated Complaint | 60 days after the Court enters an order appointing interim lead counsel |
| Answer or Motion to Dismiss | 30 days after the deadline for filing Consolidated Complaint |
| Deadline for Plaintiffs' Reply to Motion to Dismiss | 30 days after deadline for Motion to Dismiss |
| Hearing on Motion to Dismiss | If oral argument is requested and granted by the Court, at such time designated by the Court |
| Deadline for Plaintiffs to file Motion for Class Certification (including disclosure of class certification related experts) | 180 days after a ruling on the Motion to Dismiss |
| Deadline for Defendant to file Opposition to Motion for Class Certification (including disclosure of rebuttal experts) | 60 days after deadline for Plaintiffs' Motion for Class Certification |
| Deadline for <i>Daubert</i> Motions (class certification only) | 60 days after deadline for Defendant to file Opposition to Motion for Class Certification |

| Event | Proposed Date |
|--|--|
| Deadline for Response to any <i>Daubert</i> Motions | 45 days after deadline for <i>Daubert</i> Motions |
| Plaintiffs' reply in support of Motion for Class Certification | 45 days after deadline for <i>Daubert</i> Motions |
| Hearing on Class Certification and <i>Daubert</i> motions | If oral argument is requested and granted by the Court, at such time designated by the Court |

*Plaintiff believes that settlement negotiations should continue under the guidance and following the appointment of interim lead counsel, and that it may serve the class to postpone the commencement of full fact discovery and the remaining litigation schedule should good faith settlement negotiations appear likely to result in a fair, reasonable and adequate resolution of this matter.

III. CONCLUSION

For the foregoing reasons, Plaintiff Picha respectfully requests entry of an Order appointing Cari Campen Laufenberg of Keller Rohrbach L.L.P. as Interim Co-Lead Counsel.

RESPECTFULLY SUBMITTED this 24th day of April, 2024.

/s/ Cari Campen Laufenberg
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